IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 16TH OCTOBER 2007 / 24TH ASWINA 1929

WP(C).No. 11100 of 2007(U)

PETITIONER:

PROMOTERS CHARITABLE SOCIETY,
CHERUVALLY, MANIMALA, REPRESENTED BY
ITS PRESIDENT V.J.MATHEW.

BY ADV. SRI.JOHN JOSEPH VETTIKAD

RESPONDENTS:

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1. VELLAVOOR GRAMA PANCHAYATH,
MANIMALA P.O., REPRESENTED BY ITS SECRETARY.

***ADDL.R2 & R3 ARE IMPLEADED:**

R2. THE PRESIDENT,
VELLAVOOR GRAMA PANCHAYATH,
MANIMALA P.O., KOTTAYAM DISTRICT.

R3. THE CHAIRMAN,
STANDING COMMITTEE (FINANCE) AND
VICE PRESIDENT, VELLAVOOR GRAMA PANCHAYATH,
MANIMALA P.O., KOTTAYAM DISTRICT.

(*ADDL.R2 & R3 ARE IMPLEADED AS PER ORDER DTD.
12/04/2007 IN I.A.NO.5623/07)

*** ADDL.R4 IS IMPLEADED:**

R4. ASST.EXECUTIVE ENGINEER,
P.H.SUB DIVISION,
KERALA WATER AUTHORITY,
CHANGANASSERY IS IMPLEADED SUO MOTU AS PER
ORDER DTD. 17/04/07

WPC.NO.11100/2007 U

*ADDL.R5 & R6 ARE IMPLEADED:

R5. V.R.SIVARAMAN NAIR, AGED 70,
S/O.RAMAN NAIR, VADAKKE PAZHAYANKAL,
EARATH VADAKARA, P.O. MANIMALA, KOTTAYAM.

R6. MATHEW JOSEPH, NARITHOOTHIL HOUSE,
EDARIKKAPUZHA P.O., KADANIKKAD.

(*ADDL.R5 & R6 ARE IMPLEADED AS PER ORDER DTD. 7/06/07 IN I.A.NO.7455/07)

*ADDL.R7 IS IMPLEADED:

R7. THE DIRECTOR,
CENTER FOR EARTH SCIENCE STUDIES,
P.B.NO.7250, AKKULAM,
THIRUVANANTHAPURAM – 695 031.

(*ADDL.R7 IS IMPLEADED AS PER ORDER DTD. 18/06/2007 IN I.A.NO.7543/2007)

*ADDL.R8 IS IMPLEADED:

R8. ENVIRONMENTAL ENGINEER,
DISTRICT OFFICE,
KERALA STATE POLLUTION CONTROL BOARD,
ST.ANTONY'S COMPLEX, NAGAMPADAOM,
KOTTAYAM.

(*ADDL.R8 IS IMPLEADED AS PER ORDER DTD. 18/06/2007 IN I.A.NO.8059/2007)

BY ADV. SRI.M.V.BOSE for R1
SRI.SUNIL CYRIAC for R2 & R3
SRI.DINESH for R4

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON 16/10/2007 DELIVERED THE FOLLOWING:

KSS

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT IN O.S.NO.345/1994 OF THE MUNSIFF COURT, CHANGANASSERRY.

EXT.P2: COPY OF THE ORDER OF THE SUB DIVISIONAL MAGISTRATE KOTTAYAM DTD. 25/06/2004.

EXT.P3: COPY OF THE MINUTES OF THE MEETING OF THE PANCHAYAT COMMITTEE OF VELLAVOOR GRAMA PANCHAYAT DTD. 24/05/1993.

EXT.P4: COPY OF THE LICENCE ISSUED BYTHE PANCHAYAT.

EXT.P5: COPY OF THE CONSENT RENEWAL ORDER ISSUED FROM THE STATE POLLUTION CONTROL BOARD DTD. 28/07/2006.

EXT.P6: PHOTOGRAPHS SHOWING THE COVERED METAL CRUSHER UNIT AND THE SURROUNDINGS.

EXT.P7: COPY OF THE APPLICATION SUBMITTED ON 9/3/2007 BY THE PETITIONER BEFORE THE VELLAVOOR GRAMA PANCHAYAT.

EXT.P8: COPY OF THE LITHO PLAN OF THE AREA.

EXT.P9: PHOTOGRAPHS OF THE WATER TANK CONSTRUCTED IN THE PLACE WHERE THE NEW WATER TANK IS PROPOSED TO BE ESTABLISHED.

EXT.P10: COPY OF THE MINUTES OF THE PANCHAYATH COMMITTEE DTD. 23/03/2007.

EXT.P11: COPY OF THE REPORT OF THE SECRETARY OF THE PANCHAYATH DTD. 12/03/2007.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF REPORT DTD. 12/03/2007 OF THE PANCHAYAT SECRETARY.

EXT.R1(B): COPY OF RESOLUTION DTD. 23/03/2007 OF THE VELLAVOOR GRAMA PANCHAYATH.

WPC.NO.11100/2007 U

EXT.R1(C): COPY OF RESOLUTION OF THE VELLAVOOR GRAMA PANCHAYATH.

5TH RESPONDENT'S EXHIBITS:

EXT.R5(A): COPY OF THE LETTER ISSUED BY THE ASST.EXE.ENGINEER TO THE SECRETARY/PRESIDENT VELLAVOOR GRAMA PANCHAYAT DTD. 29/03/2007.

EXT.R5(B): COPY OF THE LETTER DTD.11/04/2007 ISSUED BY THE ASST.EXE.ENGINEER TO THE SECRETARY VELLAVOOR GRAMA PANCHAYAT.

8TH RESPONDENT'S EXHIBIT:

EXT.R8(A): COPY OF THE REPORT FILED BY THE 8TH RESPONDENT DTD. 20/07/2007.

/TRUE COPY/

P.S.TO JUDGE

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ANTONY DOMINIC, J.

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W.P.(C) No. 11100 OF 2007U
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Dated this the 16th October, 2007

J U D G M E N T

This writ petition has been filed by a Charitable Society praying for quashing Ext.P10 decision of the 1st respondent Panchayat and to direct the Panchayat to renew its licence for the conduct of a stone metal crusher unit, in the property comprised in Sy. No.232/1 of Vellavoor Village.

2. After obtaining necessary licences, the petitioner established a Stone Metal Crusher Unit. Ext.P3 dated 24.05.1993 is the resolution of the 1st respondent to grant licence to the petitioner's unit and Ext.P4 is the licence No.4/1993-94 granted in pursuance thereof. After about a year, a suit was filed before the Munsiff's Court, Changanassery as O.S.No.345 of 1994 seeking to restrain the unit from functioning and the suit was dismissed by Ext.P1 judgment. Thereafter, proceedings under section 133 of the Cr.P.C. were initiated by the Sub Divisional Magistrate, Kottayam at the instance of some other persons and that also resulted in Ext.P2 order holding that the A party therein failed to prove any public nuisance or danger. The case was dismissed with a direction to the petitioner to obtain fresh licences and permission from the authorities concerned for operating the unit.

3. It is the case of the petitioner that the Kerala State Pollution Control Board ('KSPCB' for short) had granted consent for the establishment of the unit and that the same was

renewed upto 30.06.2009 by Ext.P5. In the meantime the licence granted to the petitioner had expired and Ext.P7 application was submitted for its renewal. It is averred in the writ petition that Ext.P7 application was considered by the Panchayat Committee on 23.03.2007 and it was resolved not to renew the licence and that copy of the resolution was not even issued to the petitioner. It is at that stage, this writ petition was filed on 29.03.2007.

4. On 30.03.2007 when this case came up for orders, this Court has passed an interim order directing the 1st respondent to issue certified copy of the relevant Minutes of the Committee held on 23.03.2007 together with a copy of the Secretary's Report submitted before the Committee. Thereafter, the documents were given to the petitioner and along with I.A.No.5346 of 2007, the Minutes of the Meeting and the Report of the Secretary, were produced marking the same as Exts.P10 and P11 respectively. It is stated in Ext.P10 that after detailed deliberations, it was resolved by the Panchayat to obtain the expert opinion of the Kerala Water Authority, Centre for Earth Science Studies/ Central Water Commission before the application is considered. It was so resolved on the apprehension that the establishment of the unit would adversely affect the proposed water supply scheme for which a Water Treatment Plant was to be established in the vicinity of the unit. Ext.P11 dated 12.03.2007 is the Report of the Secretary of the 1st respondent, which states that the location of the proposed Water Treatment Plant is about 3/4 K.M away from the site and that in between that location and the site, there are two other stone metal crusher units functioning.

5. It is contending that if the unit is established

there is no possibility of any kind of pollution, that there are two other units already functioning, that no steps have been taken for the establishments of the Water Treatment Plant, this writ petition has been filed. Petitioner has also produced as Ext.P8, copy of a litho plan, indicating the location of the unit and the proposed Water Treatment Plant. Ext.P9 photographs have been produced stating that in the proposed location there already exists a storage tank, which is not in use at all. On these averments, petitioner is seeking the relief's mentioned above.

6. On behalf of the 1st respondent, the Secretary has filed a counter affidavit producing Exts.R1(a) and (b), which are Exts.P11 and P10 and stating that the application of the petitioner can be considered and licence granted only after the report of the experts are obtained.

7. The President and Vice President of the 1st respondent Panchayat, filed I.A.No.5623 of 2007 to get themselves impleaded as Addl. Respondents 2 and 3, which was allowed by order dated 17.04.2007. They have filed a counter affidavit contending inter-alia that the remedy of the petitioner is provided under Section 276 of the Kerala Panchayat Raj Act 1994. It is also stated that since the Panchayat Committee has not rejected the application of the petitioner but has only resolved to obtain an expert opinion before taking a decision, the writ petition is premature. It is also their contention that the Panchayat cannot be restrained from exercising its right as the licensing authority.

8. I.A.No. 7455 of 2007 was filed by two persons claiming to be the beneficiaries of the proposed water supply scheme, seeking to get themselves impleaded as Addl. Respondents

5 and 6. This court by order dated 07.06.2007 allowed their impleadment also and they have filed a counter affidavit, the main thrust of which is that the unit will affect the water supply scheme.

9. This court by order dated 17.04.2007 suo moto impleaded the Kerala Water Authority ('KWA' for short), as additional 4th respondent. By orders dated 07.06.2007 and 18.06.2007 in I.A.Nos.7453 of 2007 and 8059 of 2007, the Centre for Earth Science Studies, Trivandrum ('CESS' for short) and the Environmental Engineer, KSPCB, were impleaded as Addl. Respondents 7 and 8 respectively. These additional respondents have filed statements and reports, about which detailed reference will be made at a later stage.

10. On the above pleadings the points that arise for consideration are the following:

I. In view of the statutory remedy available to the petitioner, whether the writ petition is maintainable.

II. Whether Ext.P10 Resolution of the Panchayat is legal.

III. The relief to be granted in the writ petition.

I. Point No.1: It is true that the Kerala Panchayat Raj Act 1994 provides statutory remedies against a decision in the nature of Ext.P10. It is on this basis that respondents 2 and 3 are contending that the writ petition is not maintainable. It is true that ordinarily when a statutory remedy is available, the party has to pursue that remedy. However, this is a rule of discretion and not one of compulsion. In appropriate cases the High Court may entertain a writ petition

even if any alternate remedy is available. In short the rule of alternate remedy is only a self imposed restriction.

(i) That apart this writ petition was entertained by this Court. Addl. Respondents were impleaded, both suo moto and on applications made in that behalf. Counter Affidavits and Reports have been filed by the parties. After having done all this, it is not fair to relegate the petitioner to pursue his statutory remedy. In several cases, the apex court and this court have held that after entertaining a writ petition, keeping it pending and hearing the arguments, the court should not throw out the same on the ground of availability alternate remedy. This case does not pose any disputed question of fact incapable of being resolved in this proceeding.

(ii) Following its decision ***Sri.L. Hirday Narain vs. ITO (1970 (2) SCC 355), in the case of State of H.P vs. Gujarat Ambuja Cement Ltd. (2005 (6) SCC 499)*** the apex court held that;

> "if the High Court had entertained a petition despite availability of alternate remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies; unless the High Court finds that factual disputes are involved and it would not be desirable to deal with them in a writ petition".

The law laid down by the apex court is fully applicable to the facts of this case and therefore I hold that the writ petition is maintainable.

II. Point No.2: While examining the validity of Ext.P10 Resolution of the Panchayat, the reasons stated therein needs

to be referred to. The primary apprehension that was expressed in the meeting of the Panchayat is that the functioning of the unit will affect the Manimala Major Water Supply Scheme, and it is on that basis the Panchayat resolved to seek expert opinion from KWA, CESS/ Central Water Commission. The correctness of this resolution and the reasons stated therein, can be examined only with reference to the affidavits and reports such as Ext.P11 Reports of the Secretary of the Panchayat, KSPCB and the CESS and also the affidavit filed by the KWA in this Court.

(a) Ext.P11 report of the Secretary:

In this Report it is stated that initially the petitioner was granted licence and that the writ ceased to function following the litigations. It is stated that he had inspected the premises and that the Water Treatment Plant that was proposed to be installed was about 3/4 K.M away from the unit and that two stone metal crusher units were already functioning in closer proximity to the site of the Water Treatment Plant.

(b) Counter Affidavit by KWA:

In this affidavit the details of the Comprehensive Water Supply Scheme to Manimala and adjoining Villages, have been furnished. According to KWA, the main factors to be considered in the context of Air Pollution are the dust emanating from the unit and the arial distance between the unit and the treatment plant. It is stated that the unit is in a lower area, which increases the chances of air pollutants reaching the elevated location of the treatment plant as the finer particles in the dust having lesser density will move upwards in the atmosphere. However, it is stated that since they are not provided with the

details of the activities in the unit, the KWA is not in a position to ascertain the actual level of pollution, vibration etc. According to KWA, agencies like KSPCB, CESS, Geology Department, who are the experts in their respective fields are to be involved for conducting detailed studies.

(c) Report of the KSPCB:

The Environmental Engineer had inspected the unit with notice to the respondents. He has found that the unit has satisfactorily provided pollution control measures in compliance with the conditions of the consent order, granted on 17.08.1998, for the operation of a secondary crusher of 30 HP capacity. Regarding the location of the unit the report states that;

> "the location of the crusher unit is in a rocky region surrounded by hill-locked terrain covered by rubber estates and other plantations. There are no residences within 100 meter distance on any sides of the crusher unit. The site proposed for the water treatment plant of the Kerala Water Authority is not in the vicinity of the crusher unit. The location of the said site was found to be on the top plain area of the hill existing at South West direction of the crusher unit. The arial distance between the crusher unit and the site of the proposed Water Treatment Plant has been measured by the Geologist (who accompanied the scientists from the Centre for Earths, Science and Studies) under Global Positioning System using hand held G.P.S. monitor and obtained as 710 Meter. In between the existing crusher and the site for Water Treatment Plant, two Nos. of stone quarries, reported as unlicenced, were observed

under operation.

Regarding the Water Treatment Plant no construction activities was seen commenced in the proposed site. According to the Assistant Executive Engineer, Kerala Water Authority, who was present during the inspection, the Government have not so far acquired the land proposed for the project.

Regarding the allegation that the proposed Water Treatment Plant will be subjected to the dust pollution, once the crusher unit is put into operation, I may submit that, considering the topographic virtue of the area where the crusher unit is located, and more over, the crusher unit being surrounded by lush green belt formed by tall plantations upto the area of the proposed site, the anticipation/ allegation of dust pollution to the Water Treatment Plant due to the operation of the crusher unit is highly impracticable even without adoption of any pollution control measures at the unit".

The report also states that under the stringent conditions imposed in the consent order,

"any dust pollution even at the boundary of the premises of the crusher unit beyond safety level is ruled out".

The report concludes by saying;

"And, it is further submitted that, the crusher unit has provided pollution control measures as per consent conditions satisfactorily. And if the crusher unit plant is operated in compliance with the consent

conditions of the Board, no any pollution problems due to the operation of the crusher unit beyond the safer limit prescribed under the Environmental (Protection) Rule is anticipated".

(d) Report submitted by CESS:

After a detailed study, the CESS concludes its report with the following Conclusion and Recommendations:

"The study revealed that reopening the Crusher would have no impact on the proposed water tank. The crusher activity with all precautionary measures causes negligible stress than quarrying and blasting. The activity of the crusher installed at the site may not affect any structures beyond a safe distance of 250 m. However, a safer distance of 500 m for water storage structures may be maintained. The following recommendations are made based on the study:-

The reopening of the Crusher unit installed by M/s. Promoters Charitable Society at Vellavoor is feasible subject to the following conditions:-

1. The proprietor should maintain the greenery of the site. Surrounding the property a green belt with the width of about 25 m – 30 m with native species may be planned and gradually developed.
2. The crusher operation should be restricted to daytime preferably between 8 AM – 6 PM.
3. The proponent should not accumulate or dump any crusher debris on the steep slopes adjacent to the crusher.
4. The proprietor shouldn't obstruct the drainage; prevent rock debris, oil and grease washed down to the stream flowing nearby.

5. The workers in the crusher should be provided with air masks to prevent dust, and earplugs to avoid health impacts due to high noise level. Wearing of earplugs and masks should be strictly enforced.
6. Four sprinklers and four showers are recommended for the crushing unit. Their regular operation should be ensured. Water sprinkling should also be made mandatory at sites for preventing fugitive air emissions.
7. The transportation of rock rubbles should be done in closed trucks. The roads should be surfaced and maintained periodically by the society.
8. All machinery should be in good working condition and ensure all safety measures on site.
9. The proprietor should strictly implement all the conditions and directions stipulated in the consent to establish the crusher unit issued by the Kerala State Pollution Control Board.
10. The environmental situation may be reviewed by a competent agency once the Crusher is in operation, and corrective measures, if required, should be taken.

The Grama Panchayat may also take necessary steps to restrict the number of crusher units and quarries in the area".

11. Thus, from the reports made by the above Expert bodies, it is evident that if the unit is allowed to function strictly in compliance with the conditions specified in the consent order issued by the KSPCB and the recommendations of the CESS, there cannot be any threat of air pollution to the proposed Water Treatment Plant. Therefore, the apprehension

expressed by the members of the committee when they passed Ext.P10 Resolution and that of respondents 2, 3, 5 and 6 in the counter affidavits filed in this case, has no basis. In this context I should also mention that the reports of the Secretary and the KSPCB specifically refers to the functioning of two stone metal crusher units in closer proximity to the site of the proposed Water Treatment Plant, the distance of which is now confirmed to be 710 meters away from the site of the unit. Both these aspects were conveniently omitted by the committee when they deliberated on Ext.P7 renewal application submitted by the petitioner.

12. After the aforesaid materials were filed in this court, by order dated 16.08.2007 this court directed the 1st respondent consider the reports and take a decision in the matter on or before 5th September 2007, keeping in view the opinion/grievances of other respondents also. In pursuance to this order Panchayat considered this matter in their meeting held on 04.09.2007 when they passed Ext.R1(c) resolution. Instead, since its apprehension of pollution mentioned in Ext.P10 has been proven to be baseless, one would have expected the 1st respondent to have renewed the licence. It is stated in Ext.R1(c) that though Ext.P7 application was for using 30 H.P. Motor, during inspection of the unit a motor of 50 H.P. was found. It is stated that since consent with respect to the 50 H.P. motor has not been obtained by the petitioner from the KSPCB, it was resolved to defer a decision on the application until consent was obtained.

13. Petitioner does not dispute the existence of a 50 H.P. motor at the unit nor does it dispute that it does not have consent in respect of the said motor. On the other hand

Ext.P3 application of the petitioner is to renew the licence with the 30 H.P. motor and the petitioner submits that unless and until they obtain consent in respect of the 50 H.P. motor, they will not utilize the same. However, this aspect has not been considered by the Panchayat either in Ext.P10 or in Ext.R1 (c). On the other hand the existence of the 50 H.P. motor has been used conveniently, to deny renewal of licence to the petitioner, when the possibility of pollution, the only reason stated in Ext.P10, has now been ruled out by the KSPCB and the CESS. Thus, it is obvious that the 1st respondent Panchayat has been inventing reasons to deny licence to the petitioner.

14. With the reports submitted by the KSPCB and the CESS I am satisfied that the reasoning of the Panchayat for denying renewal of licence for running the petitioner's unit with a 30 H.P. motor is illegal and arbitrary and Ext.P10 resolution dated 23.03.2007 deserves to be set aside and I do so.

III. Point No.3: Now that I have found that Ext.P10 resolution of the 1st respondent is illegal and arbitrary, the next question is as to what is the relief that the petitioner is entitled to. Ordinarily, when the decision of a statutory authority is set aside by a court, the matter will be remanded to that authority with a direction to reconsider the matter. It is on this basis that the learned counsel for additional respondents 2 and 3 contended that the Panchayat cannot be deprived of its statutory right to decide on the application on the petitioner, on which till now, no final decision has been taken.

(ii) I would have certainly remitted matter back to the Panchayat with a direction to take a fresh decision in the

matter. However, in this case, I am satisfied that such a direction can only do injustice to the petitioner. My reasons for such a conclusion are that the decision of the Panchayat on Ext.P7 renewal application was to obtain report of expert bodies such as KWA, CESS/ Central Water Commission. This court by order dated 17.04.2007 impleaded KWA as additional respondent No.4 and CESS was impleaded by order dated 07.06.2007 in I.A.No.7453 of 2007. In addition to this the KSPCB also has been impleaded by order dated 18.06.2007 in I.A.No.8059 of 2007. The CESS has reported in favour of allowing the unit to function, subject to conditions. The KSPCB's Report is also one ruling out pollution on compliance with the conditions of the consent order. The KWA, though apprehends air pollution, suggested study by expert bodies such as KSPCB. In both Exts.P10 and R1(c), Panchayat has no case that the unit is lacking in any respect. Thus, with the materials that have come on record, I have to conclude that the apprehension of air pollution expressed by the Panchayat in Ext.P10 has no basis.

(iii) While the Panchayat seems to be very concerned about the threat of pollution from the petitioner’s unit, it had not shown any such concern while two stone metal crusher units were functioning in closer proximity to the site of the proposed water treatment plant, despite the fact that these units did not have any licence. However, Panchayat has made a last minute attempt to tell this court in its affidavit dated 30.09.2007, that action is already taken to stop functioning of these quarries and no permission has been granted to the functioning of the same. Therefore, the attempt is deny licence to the petitioner for reasons which are not genuine or

bonafide.

(iv) My conclusion is fortified by Ext.R1(c) resolution of the Panchayat, passed pursuant to this court's order dated 16.08.2007. In the light of materials available, one would have expected the Panchayat to grant the licence. However, this resolution, a new reason has been invented by the Panchayat that the petitioner has not obtained consent in respect of its 50 H.P. motor. As I have already mentioned Ext.P7 application of the petitioner was only for renewing the licence with a 30 H.P. motor and neither the petitioner nor the Panchayat has a case that the petitioner has made any application in respect of its 50 H.P. motor. Petitioner has undertaken that unless and until necessary licenses are obtained, the 50 H.P. motor will not be made use of. Thus, on the whole, the Panchayat was deliberately refusing to take a final decision on Ext.P7 application and the intention is to deny licence to the petitioner, which has already set up and was functioning the stone metal crusher units.

(v) The apex court in ***Controller and Auditor General of India vs. K.S. Jagannathan*** **(1986 (2) SCC 679)** has held as follows:

> "Art.226 is designedly couched in a wide language in order not ot confine the power conferred by it on the High Courts only to the power to issue prerogative writs as understood in England. The High Courts exercising jurisdiction under Art.226 can issue 'directions, order of writs' so as to enable the High Courts to reach injustice wherever it is found and to mould the reliefs to meet the peculiar and complicated requirements of

this country. The High Courts have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion *mala fide* or in irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can compel the performance in a proper and lawful manner to the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion".

Following this, a Division Bench of this court in ***Jancy Chandy vs. Jose Puthenkala*** **(2006 (4) KLT 116)** held that the jurisdiction of this Court under Article 226 of the Constitution of India cannot be cribbed and cabined by technical pleas and that it is meant to reach wherever injustice is found and to prevent injustice, the writ court should in appropriate cases pass orders and give directions which the concerned statutory authorities could have and should

have passed. By the aforesaid reasoning, the Division Bench upheld the judgment of the Learned Single Judge declaring that the appellant therein had incurred disqualification in terms of Section 3 of the Local Authorities (Prohibition of Defection) Act 1999 (Kerala).

15. Following the law laid down by the Apex Court and this Court, I am satisfied that in the circumstances of this case, the 1st respondent Panchayat should be directed to renew the licence of the petitioner pursuant to Ext.P7 application submitted by it. I make it clear that the petitioner shall function its stone metal crusher unit strictly in compliance with the consent order of the KSPCB and the recommendations of the CESS. Necessary orders renewing the licence of the petitioner will be passed by the 1st respondent within 2 weeks from the date of receipt of a copy of the judgment.

ANTONY DOMINIC
JUDGE

pr/jan.